

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

These rules will become effective on February 17, 2010, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 410 to 412] is being omitted. These rules are identical to those published under Notice as **ARC 8219B** and Adopted and Filed Emergency as **ARC 8218B**, IAB 10/7/09.

[Filed 12/18/09, effective 2/17/10]

[Published 1/13/10]

[For replacement pages for IAC, see IAC Supplement 1/13/10.]

## **ARC 8466B**

### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 19, 2008, as **ARC 7368B**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8038B** on August 12, 2009. The Administrative Rules Review Committee requested a formal regulatory analysis on September 9, 2009, specific to **ARC 8038B**, to estimate the impact Outstanding Iowa Waters (OIW) protections would have on the growth and economies of neighboring rural communities.

Thirteen public hearings were held overall with notice of the hearings sent to various individuals, organizations, associations and interest groups and to statewide news network organizations. Comments were received from approximately 930 persons and organizations. A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources.

The adopted amendments have been modified from those published in the Notices. Prior to presenting the amendments to the Environmental Protection Commission for approval, the Department made specific changes to the "Iowa Antidegradation Implementation Procedure" document. The modifications were made after all comments from the public comment process were considered.

Several nonsubstantive corrections, such as formatting, sentence restructuring, and deletion of redundant sections, were made to the final version of the "Iowa Antidegradation Implementation Procedure" to make it easier to understand, provide consistency, and clarify the original intent of certain aspects of the rule. The major substantive changes made to the Notice and the "Iowa Antidegradation Implementation Procedure" prior to presentation to the Commission are as follows:

1. Revised the Tier 2 language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to clarify where Tier 2 protection applies.
2. Revised Tier 2½ language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to reflect the three scenarios where degradation of an Outstanding Iowa Water may occur.
3. Revised the nomination and review criteria for Outstanding Iowa Waters and Outstanding National Resource Waters in Section 1.3 of the "Iowa Antidegradation Implementation Procedure" to provide additional clarity and detail to the Department's expectations of the nomination process and criteria that need to be met for successful nomination of a water as an Outstanding Iowa Water or Outstanding National Resource Water.
4. Deleted the combined sewer overflow language in Section 2.2 of the "Iowa Antidegradation Implementation Procedure" as the situation described did not result in degradation.

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5. Deleted the total residual chlorine language in Section 2.2 of the “Iowa Antidegradation Implementation Procedure” as an effective demonstration was not made that this activity would not significantly degrade water quality.

6. Revised the public and intergovernmental participation language in Section 4 of the “Iowa Antidegradation Implementation Procedure” to provide additional detail and clarity to the public and intergovernmental participation process.

7. Added Section 6.5 to the “Iowa Antidegradation Implementation Procedure” to address the change in the approach to Clean Water Act-regulated open lot confined animal feeding operations.

8. Revised Section 7 of the “Iowa Antidegradation Implementation Procedure” to reflect the appropriate intent for implementation.

9. Revised “Appendix B – Outstanding Iowa Waters” for lakes to remove Upper Gar Lake, Lower Gar Lake, Minnewashta Lake, and East Okoboji Lake as these lakes do not qualify as Outstanding Iowa Waters at this time.

These changes to the “Iowa Antidegradation Implementation Procedure” were initiated based upon comments received in regard to the Notice of Intended Action and Amended Notice of Intended Action. The potential for these revisions to be included in the final rule making was anticipated by impacted parties as indicated by their comments submitted in regard to these issues.

With the inclusion of the modifications described above, these amendments effect changes to the Commission’s Water Quality Standards (WQS) as summarized below:

- Incorporate by reference the document entitled “Iowa Antidegradation Implementation Procedure,” which proposes an approach to be followed in assessing and minimizing degradation of Iowa’s surface waters.

- Update antidegradation policy language with a four-tier approach.
- Remove High Quality (Class HQ) and High Quality Resource (Class HQR) designated uses, as they are being replaced by the four-tier approach.

The following changes were made to the amendments published under Notice of Intended Action:

In new paragraph 61.2(2)“d,” the word “direct” was removed from the phrase “permanent new or expanded source of pollutants” in the last sentence. The paragraph now reads as follows:

“d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.”

In the Bacteria Criteria Table in Item 4, formatting of the amended row was changed, and the row now appears as follows:

[Class A2 and B(CW)] or OIW or ONRW		
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Additional information on Iowa’s Water Quality Standards and the Department’s rules can be found on the Department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses as described in the regulatory analysis published as a part of this rule-making process. The regulatory analysis was published in the Iowa Administrative Bulletin on October 21, 2009.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

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These amendments shall become effective February 17, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.2(2), 61.3] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7368B**, IAB 11/19/08, and Amended Notice as **ARC 8038B**, IAB 8/12/09.

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[For replacement pages for IAC, see IAC Supplement 1/13/10.]

**ARC 8470B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsections 455A.6(6)"a," 455B.105(3) and 455B.392(1)"c," the Environmental Protection Commission hereby amends Chapter 133, "Rules for Determining Cleanup Actions and Responsible Parties," Iowa Administrative Code.

Iowa Code section 455B.392(1)"c" provides that a person having control of a substance is strictly liable to the state of Iowa for damages to natural resources caused by a hazardous condition. The Commission has adopted requirements in paragraph 133.6(3)"b" setting out the methods for counting dead fish and assigning a monetary value for specific fish species. These requirements are based on the Natural Resource Commission (NRC) fish restitution rules in 571—Chapter 113. NRC rule-making authority is derived from Iowa Code section 481A.151, which authorizes use of both the American Fisheries Society methods and values and also an alternative method for assigning monetary values to game fish valued at not less than \$15 per fish. The NRC has also initiated a rule making incorporating the same changes herein.

Rule 567—133.2(455B) has been amended in the following manner: First, the adopted amendments redefine the meaning of "AFS," the acronym used for the American Fisheries Society's special publications on fish-counting methods and restitution valuation. The language has been updated to state that Special Publication 30, the most current AFS publication regarding fish-counting methods and restitution valuation, shall be used by the Department. Second, the amendment of subparagraph 133.6(3)"b"(3) revises the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8122B**. No changes have been made to the amendments published under Notice.

These amendments are intended to implement Iowa Code sections 455B.392, 456A.23, and 481A.2.

These amendments shall become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend rule **567—133.2(455B,455E)**, definition of "AFS," as follows:

"AFS" means the Special Publication 24 30, "Investigation and ~~Valuation of Fish Kills~~ Monetary Values of Fish and Freshwater Mussel Kills," published by the American Fisheries Society.

ITEM 2. Amend subparagraph **133.6(3)"b"(3)** as follows:

(3) The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger). the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill,